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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**

8
9 Paula Lynette Richardson,
10 Plaintiff,
11 v.
12 Carolyn W Colvin,
13 Defendant.

No. CV-15-01185-PHX-JZB

ORDER

15 Plaintiff Paula Lynette Richardson seeks review of the Social Security
16 Administration Commissioner's decision denying her application for disability and
17 disability insurance benefits under the Social Security Act. (Doc. 1; Doc. 24.) For the
18 reasons below, the Court will vacate the Commissioner's decision and remand this matter
19 for further proceedings consistent with this Order.

20 **I. Background**

21 On March 25, 2005, Plaintiff filed her first Title II application for a period of
22 disability and disability insurance benefits, as well as a Title XVI application for
23 supplemental security income. (AR¹ at 174.) Plaintiff alleged that her disability began
24 on December 17, 2004. (*Id.*) Plaintiff's claims were initially denied on August 5, 2005,
25 and denied upon reconsideration on November 18, 2005. (*Id.*) In a June 2007 decision,
26 an ALJ found Plaintiff was not entitled to disability insurance or supplemental social
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28 ¹ Citations to "AR" are to the administrative record.

1 security benefits.² (*Id.* at 26, 174-80.)

2 On April 20, 2011, Plaintiff filed applications for a period of disability and
 3 disability insurance benefits, as well as supplemental social security benefits, alleging an
 4 onset date of February 28, 2008. (*Id.* at 262-65.) On October 7, 2011, the Social
 5 Security Administration denied Plaintiff's applications. (*Id.* at 26.) On June 29, 2012,
 6 the Social Security Administration denied Plaintiff's request for reconsideration with
 7 regard to her application for disability and disability insurance benefits. (*Id.*) On July 30
 8 2012, the Commissioner found Plaintiff eligible for supplemental social security benefits.
 9 (*Id.* at 199.)

10 Pursuant to Plaintiff's request, a hearing was held on January 16, 2013, before
 11 ALJ Claudia L Rosen-Underwood (the ALJ) regarding Plaintiff's application for
 12 disability and disability insurance benefits. (*Id.* at 26-43.) In a decision dated August 30,
 13 2013, the ALJ found that Plaintiff "was not disabled under sections 216(i) and 223(d) of
 14 the Social Security Act through December 31, 2011, the last date insured."³ (*Id.* at 43.)
 15 The Appeals Council denied Plaintiff's request for review of the ALJ's decision, making
 16 the ALJ's decision the final decision of the Commissioner of the Social Security
 17 Administration. (*Id.* at 1-4.)

18 Having exhausted the administrative review process, on June 26, 2015, Plaintiff
 19

20 ² The ALJ found that Plaintiff suffered from the following severe impairments:
 21 diabetes mellitus, new onset neuropathy, and mood disorder. (*Id.* at 176.) The ALJ
 22 found Plaintiff had the residual functional capacity to perform sedentary work. (*Id.* at
 23 177.) The ALJ further found that Plaintiff would still be capable of performing her past
 24 relevant work as a telephone sales representative, secretary, and data entry specialist. (*Id.*
 25 at 180.)

26 ³ In her decision, the ALJ found that Plaintiff rebutted the presumption of
 27 continuing non-disability after the previous unfavorable ALJ decision because Plaintiff
 28 "alleged worsening of her pain and demonstrated she was being treated for carpal tunnel
 syndrome and cervical radiculopathy, with a new diagnosis of anxiety disorder," which
 constitute a changed circumstance, and Plaintiff "underwent several consultative
 examinations at the request of the State agency. . . which constitute new and material
 evidence." (*Id.* at 27.) Therefore, the ALJ made new findings based on all of the
 pertinent evidence. (*Id.*); *see also Chavez v. Bowen*, 844 F.2d 691, 693 (9th Cir. 1988)
 ("The claimant, in order to overcome the presumption of continuing non-disability arising
 from the first administrative law judge's findings of non-disability, must prove 'changed
 circumstances' indicating a greater disability.").

1 sought judicial review of the ALJ's decision by filing a Complaint in this Court pursuant
 2 to 42 U.S.C. § 405(g). (Doc. 1.) On December 11, 2015, Plaintiff filed an Opening
 3 Brief, seeking remand of this case to the Social Security Administration, alleging that the
 4 ALJ ignored the opinions of certain examining and non-examining physicians. (Doc. 24
 5 at 8-11.) Plaintiff alleges that those doctors' opinions limit Plaintiff to simple, repetitive
 6 tasks and one- to two-step instructions. (*Id.*) On January 11, 2016, Defendant filed a
 7 Response Brief in support of the Commissioner's decision. (Doc. 26.) On January 25,
 8 2016, Plaintiff filed a Reply Brief. (Doc. 27.)

9 **II. Legal Standards**

10 **a. Standard of Review**

11 The Social Security Act, 42 U.S.C. § 405(g), provides for judicial review of the
 12 Commissioner's disability benefits determinations. The Court may set aside the
 13 Commissioner's disability determination only if the determination is not supported by
 14 substantial evidence or is based on legal error. *Orn v. Astrue*, 495 F.3d 625, 630 (9th Cir.
 15 2007); *Marcia v. Sullivan*, 900 F.2d 172, 174 (9th Cir. 1990). “Substantial evidence”
 16 means more than a mere scintilla, but less than a preponderance; it is such relevant
 17 evidence as a reasonable person might accept as adequate to support a conclusion.”
 18 *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035 (9th Cir. 2007); *see also Reddick v. Chater*,
 19 157 F.3d 715, 720 (9th Cir. 1998).

20 In determining whether substantial evidence supports the ALJ's decision, the
 21 Court considers the record as a whole, weighing both the evidence that supports and that
 22 which detracts from the ALJ's conclusions. *Reddick*, 157 F.3d at 720; *Tylitzki v. Shalala*,
 23 999 F.2d 1411, 1413 (9th Cir. 1993). The ALJ is responsible for resolving conflicts,
 24 ambiguity, and determining credibility. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir.
 25 1995); *Magallanes v. Bowen*, 881 F.2d 747, 750 (9th Cir. 1989). The Court “must
 26 uphold the ALJ's decision where the evidence is susceptible to more than one rational
 27 interpretation.” *Andrews*, 53 F.3d at 1039. “However, a reviewing court must consider
 28 the entire record as a whole and may not affirm simply by isolating a ‘specific quantum

1 of supporting evidence.”” *Orn*, 495 F.3d at 630 (quoting *Robbins v. Soc. Sec. Admin.*, 466
 2 F.3d 880, 882 (9th Cir. 2006)). The Court reviews only those issues raised by the party
 3 challenging the ALJ’s decision. *See Lewis v. Apfel*, 236 F.3d 503, 517 n.13 (9th Cir.
 4 2001). Similarly, the Court reviews “only the reasons provided by the ALJ in the
 5 disability determination and may not affirm the ALJ on a ground upon which he did not
 6 rely.” *Garrison v. Colvin*, 759 F.3d 995, 1010 (9th Cir. 2014).

7 **b. The ALJ’s Five-Step Evaluation Process**

8 To be eligible for Social Security benefits, a claimant must show an “inability to
 9 engage in any substantial gainful activity by reason of any medically determinable
 10 physical or mental impairment which can be expected to result in death or which has
 11 lasted or can be expected to last for a continuous period of not less than 12 months.” 42
 12 U.S.C. § 423(d)(1)(A); *see also Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). A
 13 person is under a disability only:

14 if his physical or mental impairment or impairments are of
 15 such severity that he is not only unable to do his previous
 16 work but cannot, considering his age, education, and work
 17 experience, engage in any other kind of substantial gainful
 work which exists in the national economy.

18 42 U.S.C. § 423(d)(2)(A).

19 The ALJ follows a five-step evaluation process to determine whether an applicant
 20 is disabled under the Social Security Act:

21 The five-step process for disability determinations begins, at
 22 the first and second steps, by asking whether a claimant is
 23 engaged in “substantial gainful activity” and considering the
 24 severity of the claimant’s impairments. *See* 20 C.F.R. §
 25 416.920(a)(4)(i)-(ii). If the inquiry continues beyond the
 26 second step, the third step asks whether the claimant’s
 27 impairment or combination of impairments meets or equals a
 listing under 20 C.F.R. pt. 404, subpt. P, app. 1 and meets the
 duration requirement. *See id.* § 416.920(a)(4)(iii). If so, the
 claimant is considered disabled and benefits are awarded,
 ending the inquiry. *See id.* If the process continues beyond
 the third step, the fourth and fifth steps consider the
 claimant’s “residual functional capacity” in determining
 whether the claimant can still do past relevant work or make
 an adjustment to other work. *See id.* § 416.920(a)(4)(iv)-(v).

28 *Kennedy v. Colvin*, 738 F.3d 1172, 1175 (9th Cir. 2013). “The burden of proof is on the

1 claimant at steps one through four, but shifts to the Commissioner at step five.” *Bray v.*
 2 *Comm'r of Soc. Sec. Admin.*, 554 F.3d 1219, 1222 (9th Cir. 2009).

3 Applying the five-step evaluation process, the ALJ found that Plaintiff was not
 4 disabled from the time period of February 28, 2008 (the alleged onset date) to December
 5 31, 2011 (the last date insured), and is not entitled to benefits. (AR at 29-43.) At step
 6 one, the ALJ found that Plaintiff did not engage in substantial gainful activity from the
 7 alleged onset date through her last date insured. (*Id.* at 29.) At step two, the ALJ found
 8 that Plaintiff had the following severe impairment: insulin dependent diabetes mellitus
 9 with peripheral neuropathy. (*Id.* at 30.) The ALJ found that Plaintiff’s other alleged
 10 mental and physical impairments did not cause more than a minimal limitation in basic
 11 work activities and, therefore, were not severe. (*Id.* at 30-33.) At step three, the ALJ
 12 determined that Plaintiff did not have an impairment or combination of impairments that
 13 met or medically equaled the severity of one of the listed impairments in Appendix 1 to
 14 Subpart P of 20 C.F.R. Pt. 404 (20 C.F.R. 404.1520(d), 404.1525, and 404.1526). (*Id.* at
 15 33.)

16 At step four, the ALJ found that Plaintiff had the residual functional capacity
 17 (“RFC”) to perform sedentary work as defined in 20 C.F.R. 404.1567(a). (*Id.* at 33.) The
 18 ALJ further determined that Plaintiff is unable to perform any of her past relevant work.
 19 (*Id.* at 42.) Finally, at step five, the ALJ found that the Medical-Vocational Rules support
 20 a finding that Plaintiff is not disabled, and “considering [Plaintiff’s] age, education, work
 21 experience, and residual functional capacity, there were jobs that existed in significant
 22 numbers in the national economy that [Plaintiff] could have performed.” (*Id.*) The ALJ
 23 also found that Plaintiff could have performed work as a telephone solicitor. (*Id.*) Given
 24 those findings, the ALJ concluded that Plaintiff “was not under a disability, as defined in
 25 the Social Security Act, at any time from” the alleged onset date through the last date
 26 insured. (*Id.* at 43.)

27 **III. Analysis**

28 Plaintiff alleges that the ALJ did not explain the weight given to the opinions of:

1 (1) consultative examining physicians Dr. Steingard and Dr. Mansfield; and (2) State
 2 agency non-examining physicians Dr. Campbell and Dr. Pereyra. (Doc. 24 at 8-11.)
 3 Below, the Court addresses Plaintiff's argument.

4 **a. Legal Standard**

5 The Ninth Circuit distinguishes between the opinions of treating physicians,
 6 examining physicians, and non-examining physicians. *See Lester v. Chater*, 81 F.3d 821,
 7 830 (9th Cir. 1995). Generally, an ALJ should give greatest weight to a treating
 8 physician's opinion and more weight to the opinion of an examining physician than to
 9 one of a non-examining physician. *See Andrews*, 53 F.3d at 1040-41; *see also* 20 C.F.R.
 10 § 404.1527(c)(2)-(6). If it is not contradicted by another doctor's opinion, the opinion of
 11 a treating or examining physician can be rejected only for "clear and convincing"
 12 reasons. *Lester*, 81 F.3d at 830 (citing *Embrey v. Bowen*, 849 F.2d 418, 422 (9th Cir.
 13 1988)). "If a treating or examining doctor's opinion is contradicted by another doctor's
 14 opinion, an ALJ may only reject it by providing specific and legitimate reasons that are
 15 supported by substantial evidence." *Garrison*, 759 F.3d at 1012 (quoting *Ryan v.*
 16 *Comm'r of Soc. Sec.*, 528 F.3d 1194, 1198 (9th Cir. 2008)).

17 An ALJ can meet the "specific and legitimate reasons" standard "by setting out a
 18 detailed and thorough summary of the facts and conflicting clinical evidence, stating his
 19 interpretation thereof, and making findings." *Cotton v. Bowen*, 799 F.2d 1403, 1408 (9th
 20 Cir. 1986). But "[t]he ALJ must do more than offer his conclusions. He must set forth
 21 his own interpretations and explain why they, rather than the doctors', are correct."
 22 *Embrey*, 849 F.2d at 421-22. "The opinion of a non-examining physician cannot by itself
 23 constitute substantial evidence that justifies the rejection of the opinion of either an
 24 examining or a treating physician." *Lester*, 81 F.3d at 831 (emphasis in original).

25 **b. The ALJ did not err in giving partial weight to the opinions of Dr.
 26 Steingard and Dr. Mansfield.**

27 **i. Dr. Steingard's and Dr. Mansfield's Opinions**

28 Dr. Steingard met with Plaintiff on July 16, 2009, in connection with Plaintiff's
 new applications for disability benefits. (AR at 492.) Dr. Steingard conducted a

1 psychological exam of Plaintiff and completed a Psychological/Psychiatrist Medical
2 Source Statement. (*Id.* at 492-96.) Dr. Steingard opined that Plaintiff's understanding
3 and memory were grossly intact, but Plaintiff would have some problems with
4 concentration when she experiences episodes of panic, which occur weekly and last half
5 an hour. (*Id.* at 495-96.) Dr. Steingard further opined that repetitive behaviors would
6 slow Plaintiff's pace; however, cognitively, Plaintiff is able to perform a variety of tasks
7 of varying complexity and will only have mild limitations during her episodes of
8 depressed mood. (*Id.* at 496.) Dr. Steingard found that Plaintiff scored 30 out of 30 on
9 her Mini Mental State Exam. (*Id.* at 494.) Finally, Dr. Steingard opined that Plaintiff's
10 social interaction would be mildly affected by a depressed mood and that socialization is
11 not precluded. (*Id.* at 496.)

12 Dr. Mansfield completed a Psychological Report and Psychological/Psychiatric
13 Medical Source Statement on September 22, 2011. (*Id.* at 610-15.) Based on his
14 evaluation, Dr. Mansfield opined that Plaintiff's understanding was fair and her intellect
15 was in the low average range. (*Id.* at 615.) Plaintiff underwent a Mini-Mental State
16 Examination, and scored a 26 out of 30, indicating that Plaintiff may have problems with
17 memory. (*Id.*) Dr. Mansfield noted that Plaintiff was deemed capable of understanding
18 and remembering simple instructions but would need close supervision and direction for
19 complex instructions and work-like procedures. (*Id.*) Dr. Mansfield opined that
20 Plaintiff's lack of motivation is present because of pain and Plaintiff would experience
21 difficulty in maintaining attention and concentration for an extended period of time. (*Id.*)
22 Dr. Mansfield further opined that based on Plaintiff's previous work in people-orientated
23 positions, she would not be expected to have difficulties in relating to coworkers and
24 supervisors, and is capable of adhering to basic standards of neatness. (*Id.*) Finally, Dr.
25 Mansfield noted that no issues relating to Plaintiff's capability of adapting to change on
26 the job were raised during their meeting or by the records provided. (*Id.*)

27 **ii. Analysis**

28 Plaintiff argues that the ALJ erred by "omit[ing] . . . the statement by Dr.

1 Steingard that [Plaintiff] had repetitive behaviors that would slow her pace and that she
 2 would have difficulty maintaining performance during episodes of panic.” (Doc. 24 at 9.)
 3 Plaintiff further argues that the ALJ committed error by failing to explain the weight
 4 given to Dr. Mansfield’s opinion that Plaintiff needed additional supervision for complex
 5 or detailed tasks with some difficulty maintaining persistence and pace, and she had
 6 difficulty maintaining attention and concentration for extended periods.⁴ (*Id.*) As
 7 detailed below, the Court disagrees.

8 The ALJ gave “some weight” to the opinions of Dr. Steingard and Dr. Mansfield,
 9 finding that their “collective opinions are generally consistent with the greater evidence
 10 of record.” (AR at 32.) However, the ALJ found that Plaintiff’s “reported activities of
 11 daily living during the period of February 2008 through December 2011, reflect a higher
 12 level of functioning, especially with regards to the ability to concentrate, focus, pay
 13 attention, and persist at tasks, demonstrated by her ability to provide childcare for her
 14 grandchildren in 2008 and 2009.” (*Id.*) The ALJ noted the following:

15 Through the date last insured, [Plaintiff] was independent
 16 with her personal care and hygiene. She lived with family,
 17 including her six children. She was capable of preparing
 18 simple meals, doing some household chores, occasionally
 19 attending church events, managed her own money, and
 20 performed independent childcare services up until February
 21 2009 for three young children, including an infant. The
 22 claimant watched television, did a little reading, listened to
 23 music, and was able to take her children (grandchildren) to
 24 the park and play with them. She reported she helped get her
 25 youngest (8-year-old) ready for school, walked her to school,
 26 picked her up from school, and helped with homework. The
 27 claimant also researched on the computer for jobs (Exhibits
 28 B1F, B13F, and Exhibit B22E).

29 (*Id.*)

30 After discussing Plaintiff’s daily activities in detail, the ALJ cited to other medical
 31 evidence in the record, including “normal mental status examinations, with no overt signs

32 ⁴ Importantly, Plaintiff does not challenge or address the specific reasons the ALJ
 33 provided for giving partial weight to the opinions of Dr. Steingard and Dr. Mansfield.
 34 (*See Doc. 24.*) Instead, Plaintiff argues only that the ALJ failed to sufficiently explain
 35 those reasons, and generally failed to give “specific and legitimate reasons for rejecting
 36 any of [the] medical [opinion] evidence.” (*Id.* at 8-10.)

1 of anxiety or depression, alert and oriented, and intellect grossly intact; mentally alert, no
 2 delusions, hallucinations, or behavior problem[s].” (*Id.* at 32-33.) The ALJ also
 3 specifically concluded that Plaintiff was only mildly limited in the area concentration,
 4 persistence, and pace. (*Id.* at 32.) In support of that conclusion, the ALJ found “Plaintiff
 5 experienced intermittent periods of distractibility, secondary to pain. However, she was
 6 capable of understanding, remembering, and carrying out simple and complex
 7 instructions and work tasks. Additionally, her scores on the mental status examination[s]
 8 of 30/30 and 26/30 were not indicative of significant cognitive deficits.” (*Id.*) Finally,
 9 the ALJ noted Plaintiff reported to Dr. Mansfield that she received no formal mental
 10 health treatment. (*Id.* at 31.)

11 As Plaintiff notes, “[t]he ALJ must explain the weight given to all medical opinion
 12 evidence.” (Doc. 1 at 9); 20 C.F.R. § 404.1527(e)(2)(ii). However, the ALJ explained
 13 the reasons for giving less weight to Dr. Steingard’s and Dr. Mansfield’s opinions
 14 regarding concentration, persistence, and pace. First, the ALJ found that although “their
 15 collective opinions are generally consistent with the greater evidence of record,” the
 16 reported activities of daily living indicated a “higher level of functioning, especially with
 17 regards to the ability to concentrate, focus, pay attention, and persist at tasks.” (AR at
 18 32.) The Ninth Circuit has ruled that “the mere fact that a plaintiff has carried on certain
 19 daily activities such as grocery shopping, driving a car, or limited walking for exercise,
 20 does not in any way detract from her credibility as to her overall disability. One does not
 21 need to be utterly incapacitated in order to be disabled.” *Vertigan v. Halter*, 260 F.3d
 22 1044, 1050 (9th Cir. 2001) (internal quotations omitted). However, if a plaintiff “is able
 23 to spend a substantial part of [her] day engaged in pursuits involving the performance of
 24 physical functions that are transferable to a work setting, a specific finding as to this fact
 25 may be sufficient to discredit a [plaintiff’s] allegations.” *Morgan v. Commissioner*, 169
 26 F.3d 595, 599 (9th Cir. 1999).

27 Here, the ALJ sufficiently made findings regarding Plaintiff’s daily activities, and
 28 sufficiently explained the basis for giving Dr. Steingard’s and Dr. Mansfield’s opinions

1 “some weight” based on those activities. The ALJ noted that Plaintiff provided childcare
 2 for her three grandchildren, ages one-year old, two-years old, and an infant, on a daily
 3 basis, and, her position as a childcare provider only ended in February 2009 because the
 4 person she was working for moved away. (AR at 32, 36, 351.) The ALJ took into
 5 consideration the fact that Plaintiff was responsible for the children’s well-being and
 6 safety, providing their meals, teaching them the alphabet, changing their clothing, and
 7 Plaintiff reported that her mental impairments did not affect her ability to care for the
 8 youngest child. (*Id.* at 32, 398-99.) Based on these findings, the ALJ appropriately gave
 9 only partial weight to the opinions of Dr. Steingard and Dr. Mansfield. *See Rollins v.*
 10 *Massanari*, 261 F.3d 853, 856 (9th Cir. 2001) (affirming the ALJ’s rejection of a
 11 Plaintiff’s symptom testimony in part due to her daily activities, including attending to
 12 “all of [her] children’s needs; meals, bathing, emotional, discipline, etc.”).

13 Second, the ALJ found that Plaintiff’s performance on her mental status exams,
 14 administered by Dr. Steingard and Dr. Mansfield, and other medical evidence in the
 15 record, were probative of her actual functional abilities. (*Id.* at 32, 494, 613.) In addition
 16 to the exam scores, the ALJ cited to “normal mental status examinations, with no overt
 17 signs of anxiety or depression, alert and oriented, and intellect grossly intact; no
 18 delusions, hallucinations, or behavioral problem[s.]” (*See, e.g., id.* at 32, 505, 513, 520,
 19 535, 594, 596.) Inconsistency with other clinical findings and medical records is a
 20 sufficient reason for giving less weight to the opinions of examining sources. *Morgan v.*
 21 *Comm’r of the Soc. Sec. Admin.*, 169 F.3d 595, 601 (9th Cir. 1999).

22 Finally, the ALJ noted that “while the medical record establishes [Plaintiff] had
 23 been diagnosed with anxiety disorder, depressive disorder, and obsessive-compulsive
 24 disorder, [Plaintiff] did not seek out any type of formal mental health treatment during
 25 the relevant period,” nor did she report or complain of any mental limitations at the
 26 hearing. (AR at 30.) The ALJ did not err in relying on Plaintiff’s lack of treatment in
 27 giving Dr. Steingard’s and Dr. Mansfield’s opinions partial weight. *See Chaundhry v.*
 28 *Astrue*, 688 F.3d 661, 671 (9th Cir. 2012) (finding the ALJ did not error in rejecting

1 examining opinions based on conflicting medical opinions and a failure to seek
 2 treatment). Accordingly, the Court finds that the ALJ explained her reasons for giving
 3 only partial weight to Dr. Steingard's and Dr. Mansfield's opinions, and those reasons are
 4 specific, legitimate, and supported by substantial evidence.

5 **c. The ALJ committed harmful error in failing to consider and discuss
 6 Dr. Campbell's non-examining opinions.**

7 Plaintiff also alleges that the ALJ erred by failing to discuss Dr. Campbell's
 8 opinions. (Doc. 24 at 9.) The ALJ gave considerable weight to the opinions of another
 9 non-examining physician, Dr. Yandell. (AR at 33.) However, the ALJ mistakenly cited
 10 to Exhibit B3A as part of her reasoning for assessing Dr. Yandell's conclusions. (*Id.*)
 11 Exhibit B3A contains the non-examining opinions of Dr. Campbell, rather than opinions
 12 provided by Dr. Yandell. (*Id.* at 101-02, 105-06.) Dr. Campbell's non-examining report
 13 states that "[Plaintiff] alleged stress, anxiety[,] and depression." (*Id.* at 102.) Further, Dr.
 14 Campbell opined that Plaintiff is limited to short/simple, repetitive tasks, "can learn and
 15 remember basic work instructions and tasks of 1-2 steps," "can follow a schedule, make
 16 decisions and complete basic work tasks on a consistent basis," "can work with and
 17 around others," and "can adapt to changes and handle the normal stressors of full time
 18 employment." (*Id.* at 106.)

19 The parties agree that the ALJ failed to discuss Dr. Campbell's opinions, which
 20 were issued on September 28, 2011. (*Id.* at 105-06.) Defendant asserts that the ALJ's
 21 failure to specifically discuss Dr. Campbell's opinions is not harmful error affecting the
 22 outcome of the case because his opinions are identical to the opinions of another non-
 23 examining source, Dr. Pereyra, and one of the ALJ's reasons for giving Dr. Pereyra's
 24 opinions less weight applies equally to Dr. Campbell's opinions.⁵ (Doc. 26 at 10.) In her
 25 Reply, Plaintiff argues "[t]he Court cannot confidently conclude that the ALJ would
 26 have reached the same assessment of all medical opinions when considering Dr.

27
 28 ⁵ The ALJ gave Dr. Pereyra's opinions "[l]ess weight" because: (1) she found the
 limitations opined by Dr. Pereyra conflicted with Plaintiff's daily activities; and (2) Dr.
 Pereyra's opinions were rendered after the last date insured. (*Id.* at 33.)

1 Pereyra[’s]” opinions in conjunction with Dr. Campbell’s opinions. (Doc. 27 at 3.)

2 The Court cannot determine based on this record how the ALJ would have
 3 weighed Dr. Campbell’s opinions regarding limitations to simple, repetitive tasks, and
 4 one- to two-step instructions, had the ALJ specifically been aware of and addressed those
 5 opinions. Although the ALJ gave little weight to Dr. Pereyra’s opinions, which were
 6 identical to Dr. Campbell’s opinions, the ALJ did so, in part, based on the fact that Dr.
 7 Pereyra rendered her opinions several months after the last date insured. (AR at 33.) Dr.
 8 Campbell’s opinions, however, were issued prior to the last date insured and
 9 approximately two years after Dr. Yandell issued his opinions.⁶ (*Id.* at 106, 1324-36.)
 10 Further, as Plaintiff notes, the Court cannot determine whether the ALJ would have
 11 weighed Dr. Campbell’s opinions differently when analyzed in conjunction with Dr.
 12 Pereyra’s opinions.

13 Defendant further argues that the ALJ’s error was harmless because Dr.
 14 Campbell’s opinions would not “significantly erode the occupational base of sedentary
 15 work and undermine the ALJ’s use of the Medical-Vocational Guidelines at step five.”
 16 (Doc. 26 at 10.) “There are two ways for the Commissioner to meet the burden of
 17 showing that there is other work in ‘significant numbers’ in the national economy that
 18 claimant can do: (1) by the testimony of a vocational expert, or (2) by reference to the”
 19 Guidelines. *Tackett*, 180 F.3d at 1099.

20 The Guidelines present, in *table form*, a short-hand method
 21 for determining the availability and numbers of suitable jobs
 22 for a claimant. These tables are commonly known as “the
 23 grids.” The grids categorize jobs by their physical-exertional
 24 requirements and consist of three separate tables — one for
 25 each category: “maximum sustained work capacity limited to
 26 sedentary work,” “maximum sustained work capacity limited
 27 to light work,” and “maximum sustained work capacity limited
 to medium work.” 20 C.F.R. pt. 404, subpt. P, app. 2,
 rule 200.00. Each grid presents various combinations of
 factors relevant to a claimant’s ability to find work. The
 factors in the grids are the claimant’s age, education, and
 work experience. For each combination of these factors, e.g.,
 fifty years old, limited education, and unskilled work

28 ⁶ Dr. Yandell issued his opinions regarding Plaintiff’s functional limitations on
 August 3, 2009. (*Id.* at 1324-36.)

1 experience, the grids direct a finding of either “disabled” or
 2 “not disabled” based on the number of jobs in the national
 3 economy in that category of physical-exertional requirements.
See id.

4 *Id.* at 1101 (emphasis in original; footnote omitted).

5 The Commissioner may rely on the Guidelines “where they *completely and*
 6 *accurately* represent a claimant’s limitations. *Id.* (emphasis in original) (citing *Heckler v.*
 7 *Campbell*, 461 U.S. 458, 461 (1983)). “In other words, a claimant must be able to
 8 perform the *full range* of jobs in a given category, i.e., sedentary work, light work, or
 9 medium work.” *Id.* (emphasis in original). “When the grids do not match the claimant’s
 10 qualifications, the ALJ can either (1) use the grids as a framework and make a
 11 determination of what work exists that the claimant can perform, . . . or (2) rely on a
 12 vocational expert when the claimant has significant non-exertional limitations.” *Hoopai*
 13 *v. Astrue*, 499 F.3d 1071, 1075 (9th Cir. 2007).

14 Here, the Court cannot determine whether the ALJ’s decision at step five is
 15 supported by substantial evidence in light of the ALJ’s error at step two in evaluating Dr.
 16 Campbell’s opinions. The ALJ found that:

17 Through the last date insured, the claimant had the residual
 18 functional capacity to perform the full range of sedentary
 19 work and a finding of “not disabled” would be directed by
 20 Medical-Vocational Rule 201.21 and Medical-Vocation Rule
 21 201.22. The claimant could also perform the work as
 22 telephone solicitor based on the vocational expert’s
 23 testimony.

24 (AR at 43.) First, there appears to be a conflict between any limitations to simple,
 25 repetitive work and one- to two- step instructions, on one hand, and a telephone solicitor
 26 position, DOT #299.357-014, which is sedentary and *semi-skilled*, on the other.
 27 Therefore, the Court cannot find the ALJ’s conclusion that Plaintiff could perform work
 28 as a telephone solicitor is supported by substantial evidence even if Dr. Campbell’s
 29 opinions are credited as true. *Zavalin v. Colvin*, 778 F.3d 842, 846 (9th Cir. 2015)
 30 (“When there is an apparent conflict between the vocational expert’s testimony and the
 31 DOT—for example, expert testimony that a claimant can perform an occupation

1 involving DOT requirements that appear more than the claimant can handle—the ALJ is
 2 required to reconcile the inconsistency.”).

3 Second, it is unclear whether Dr. Campbell’s opinions, if considered and accepted
 4 by the ALJ in conjunction with the other medical evidence, would have impacted the
 5 ALJ’s analysis at steps four and five. Although, as Defendant notes, there may be
 6 sedentary unskilled work available that Plaintiff could perform, the addition of a non-
 7 exertional limitation requires the ALJ to make specific findings as to whether, using the
 8 Grids as a framework or relying on vocational expert testimony, sufficient work exists
 9 that Plaintiff can perform. *Holohan v. Massanari*, 246 F.3d 1195, 1208-09 (9th Cir.
 10 2001) (finding legal error where the ALJ assessed the plaintiff could perform work at all
 11 exertional levels, but was limited to “at least simple, repetitive type work,” and the ALJ
 12 relied entirely on the Grids to conclude that Plaintiff was not disabled.). Here, because
 13 the ALJ found at step two that Plaintiff’s mental impairments were not severe, the ALJ
 14 did not assess the work Plaintiff could have performed if Plaintiff had non-exertional
 15 limitations, including limitations to simple, repetitive tasks and one- to two-step
 16 instructions. Based on this record, the Court “cannot determine whether substantial
 17 evidence supports the ALJ’s step-five finding that” Plaintiff is not disabled. *Massachi v.
 18 Astrue*, 486 F.3d 1149, 1154 (9th Cir. 2007); *see also Garrison*, 759 F.3d at 1010 (the
 19 Court reviews “only the reasons provided by the ALJ in the disability determination and
 20 may not affirm the ALJ on a ground upon which he did not rely.”). Therefore, the ALJ’s
 21 error was not harmless.⁷

22 **IV. Remedy**

23 The remaining issue is the appropriate remedy in light of the ALJ’s harmful error.
 24 Plaintiff argues that the Court should credit as true Dr. Campbell’s opinions as a matter of
 25 law. (Doc. 24 at 10-11.) However, in her Reply, Plaintiff asserts that whether the

27 ⁷ Because the Court finds that the ALJ committed harmful legal error in failing to
 28 address Dr. Campbell’s opinions, and, as detailed below, remand for further proceedings
 is appropriate, the Court does not separately address the ALJ’s treatment of Dr. Pereyra’s
 identical opinions.

1 occupational base constitutes a significant number of jobs, if the ALJ were to find
 2 Plaintiff was limited to simple, repetitive work and one- to two-step instructions, is “an
 3 unanswered question.” (Doc. 27 at 3.) Defendant argues that this case should be
 4 remanded for further proceedings, instead of for an award of benefits, because “[t]here is
 5 no indication that, if credited, the opinions of [Dr. Campbell] would lead to a finding of
 6 disability.” (Doc. 26 at 12.)

7 When determining the appropriate remedy, the Court follows the following
 8 analysis:

9 The district court must first determine that the ALJ made a
 10 legal error, such as failing to provide legally sufficient
 11 reasons for rejecting evidence. *Id.* If the court finds such an
 12 error, it must next review the record as a whole and determine
 13 whether it is fully developed, is free from conflicts and
 14 ambiguities, and “all essential factual issues have been
 15 resolved.” *Treichler*, 775 F.3d at 1101. In conducting this
 16 review, the district court must consider whether there are
 17 “inconsistencies between [the claimant’s] testimony and the
 18 medical evidence in the record,” *id.* at 1105, or whether the
 19 government has pointed to evidence in the record “that the
 20 ALJ overlooked” and explained “how that evidence casts into
 21 serious doubt” the claimant’s claim to be disabled, *Burrell*,
 22 775 F.3d at 1141. Unless the district court concludes that
 23 further administrative proceedings would serve no useful
 24 purpose, it may not remand with a direction to provide
 25 benefits. *Id.*

26 If the district court does determine that the “record has been
 27 fully developed,” *id.*, and there are no outstanding issues left
 28 to be resolved, the district court must next consider whether
 “the ALJ would be required to find the claimant disabled on
 remand” if the “improperly discredited evidence were
 credited as true.” *Id.* (quoting *Garrison*, 759 F.3d at 1020).

29

30 “a reviewing court is not required to credit claimants’
 31 allegations regarding the extent of their impairments as true
 32 merely because the ALJ made a legal error in discrediting
 33 their testimony.” *Treichler*, 775 F.3d at 1106. “In
 34 particular, we may remand on an open record for further
 35 proceedings ‘when the record as a whole creates serious
 36 doubt as to whether the claimant is, in fact, disabled within
 37 the meaning of the Social Security Act’” *Burrell*, 775 F.3d at
 38 1141 (quoting *Garrison*, 759 F.3d at 1021); *see also Connell*,
 39 340 F.3d at 874-76 (finding that a reviewing court retains
 40 discretion to remand for further proceedings even when the
 41 ALJ fails to “assert specific facts or reasons to reject [the
 42 claimant]’s testimony”). Only when all factual issues in the

1 record have been resolved, overwhelming evidence
 2 establishes that the claimant is disabled, and the government
 3 points to no evidence to the contrary, have we held a district
 4 court abused its discretion in failing to remand for benefits.
See Garrison, 759 F.3d at 1022.

5 *Dominguez v. Colvin*, 808 F.3d 403, 407-08 (9th Cir. 2015).

6 The Court finds that remand for further proceedings is appropriate here. First,
 7 further administrative proceedings would be useful. There are conflicts between the
 8 medical evidence in the record regarding Plaintiff's mental impairments that the ALJ
 9 must resolve before making a disability determination. Dr. Yandell's opinions, although
 10 issued earlier, contradict the limitations opined by Dr. Campbell and Dr. Pereyra. The
 11 ALJ provided reasons for giving less weight to Dr. Pereyra's opinions, but not all of
 12 those reasons apply to Dr. Campbell's opinions. Further, some of Dr. Steingard's
 13 findings and opinions contradict Dr. Campbell's and Dr. Pereyra's opinions, including
 14 Plaintiff's 30 out 30 score on her mental status exam and Dr. Steingard's opinion that
 15 Plaintiff is able to follow directions of varying complexity. And, as discussed above, the
 16 ALJ failed to address Dr. Campbell's opinions. Therefore, the Court finds there are
 17 sufficient issues and gaps that must be resolved and addressed by the ALJ to require a
 18 remand for further proceedings. Further, as Plaintiff concedes, even if Dr. Campbell's
 19 (and Dr. Pereyra's) opinions are credited as true, the ALJ would not be required to find
 20 Plaintiff disabled. In light of these issues, an immediate award of benefits is not
 21 appropriate. *See id.* at 409 ("If such outstanding issues do exist, the district court cannot
 22 deem the erroneously disregarded testimony to be true; rather, the court must remand for
 23 further proceedings."); *see also Brown-Hunter v. Colvin*, 806 F.3d 487, 496 (9th Cir.
 24 2015) ("The touchstone for an award of benefits is the existence of a disability, not the
 25 agency's legal error.").

26 The Ninth Circuit has "[w]ithout adopting a general rule," also "recognized that
 27 there are other factors which may justify application of the credit-as-true rule, even where
 28 application of the rule would not result in the immediate payment of benefits," including
 whether Plaintiff was "of advanced age and had already experienced severe delay in in

1 her application.” *Vasquez v. Astrue*, 572 F.3d 586, 593 (9th Cir. 2009). However, the
2 Court does not find those factors present here. Plaintiff does not argue otherwise.
3 Therefore, the Court will deny Plaintiff’s request to credit Dr. Campbell’s opinions as
4 true on remand.⁸

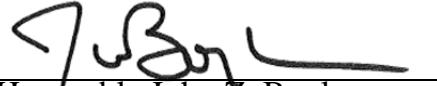
5 Based on the above, the Court will vacate the Commissioner’s decision and
6 remand this matter for further proceedings. On remand, the ALJ shall reevaluate the
7 medical opinion evidence regarding Plaintiff’s mental impairments at step two and, if
8 appropriate, reevaluate Plaintiff’s RFC at step four and whether Plaintiff was able to do
9 any other work at step five.

10 Accordingly,

11 **IT IS ORDERED** that the Commissioner’s decision is vacated and this case
12 remanded to the Social Security Administration for further proceedings consistent with
13 this Order.

14 **IT IS FURTHER ORDERED** that the Clerk of the Court shall enter judgment
15 accordingly and terminate this action.

16 Dated this 9th day of September, 2016.

17 
18 Honorable John Z. Boyle
19 United States Magistrate Judge

20
21
22
23
24 ⁸ Plaintiff also states in her Opening Brief that “[t]he remedy sought here rests on
25 the recognition that [Plaintiff] is in pay status on her SSI claim. . . . The benefit to
26 [Plaintiff] is not more benefit per month but some retroactive benefits and access to
27 Medicare instead of the state Medicaid benefit.” (Doc. 24 at 11.) Plaintiff’s argument is
28 not clear. However, to the extent Plaintiff is arguing that she should receive an
immediate award of benefits in this case because she was found disabled as of June 2012,
six months after the last date insured (AR at 199), the Court rejects that argument.
Plaintiff has failed to set forth any factual or legal basis in this case for an immediate
award of benefits for the time period prior to Plaintiff’s last date insured based on the
June 2012 finding.